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Implications of providing misleading information in the security clearance process

A recent decision of the Australian Industrial Relations Commission confirms that an APS employee who provides false and misleading information in the security clearance process can be dismissed for breach of the APS Code of Conduct.

Corey v Attorney-General's Department

Australian Industrial Relations Commission, 25 February 2005, Deegan C, PR956106

The Australian Industrial Relations Commission has upheld the termination of an employee who was dismissed for:

- providing false and misleading information in security clearance interviews;
- failing to advise his superiors of a sexual relationship conducted with an employee he was managing; and
- engaging in excessive and inappropriate use of the Department's email.

Background

Mr Corey (the employee) was an ongoing Executive Level 1 (EL1) within the Protective Security Co-ordination Centre Watch Office. The employee required a 'Top Secret' security clearance to hold that position. A clearance was granted after an initial security clearance interview was conducted but the employee was placed on an 'after care' program, which required regular review of his fitness to hold a clearance.

After concerns were raised about the content and volume of personal emails sent by the employee, a Code of Conduct investigation commenced, the employee was suspended and his security clearance was reviewed.

Doubts were raised about the accuracy of information provided by the employee during his initial and 'after care' security interview. The Department determined that the employee had breached the APS Code of Conduct and his employment was terminated.

The Hearing

The hearing explored the following issues:

- whether the employee provided false and misleading information to his vetting officer at the initial security clearance interview and the 'after-care' interview;
- whether the employee breached the Department's policy concerning appropriate email content and volume; and

- whether the employee continued to supervise a subordinate employee, despite having established an intimate relationship with her, and whether the employee had actively concealed that relationship.

The false and misleading information related to answers to questions from the vetting officer about extramarital relationships, the state of the employee's marriage, his drinking habits and circumstances during his prior employment.

The employee contended that he did not tell the vetting officer of his extramarital affairs because 'he did not consider the relationships in which he had been involved outside his marriage constituted affairs'. He also denied giving misleading answers about the state of his marriage.

In respect of his previous employment, the employee failed to mention misconduct which led to termination of his employment at the Australian Federal Police, where a 16-year-old boy in his custody was asked to get on the ground and 'oink like a pig'. He also failed to disclose that he was accused of falsely claiming flex credits prior to resigning from the Child Support Agency.

Findings

Commissioner Deegan concluded that there were a number of valid reasons for the termination of the employee's employment. Commissioner Deegan observed:

...the applicant committed what I consider the worst breach of the Code of Conduct at the very commencement of his EL1 employment when he provided false and misleading information as part of his security interview.

Commissioner Deegan found that the applicant did not provide information to the vetting officer that was relevant to the security vetting process even though asked direct questions, and that many of the answers he gave were dishonest and misleading. She concluded:

Given the nature of the employment and seniority of the position the Department could not be expected to retain in employment a person with such a blatant disregard for the truth.

The Commission also upheld the Department's findings that the employee had a clear conflict of interest in continuing to supervise an employee with whom he had formed a intimate relationship and that excessive use of the email system constituted an improper use of Departmental resources, in breach of the APS Code of Conduct.

Implications

The decision is significant because of its strong statements about the importance of employee's being truthful in the security clearance process. There is a high onus of disclosure on employees to ensure answers are honest and not misleading. The decision illustrates that serious consequences will follow where an employee who has been granted a clearance is found not to possess the qualities of honesty, integrity and trustworthiness. Failure to volunteer critical information may be regarded as seriously as providing positively false answers.

This decision demonstrates that the security clearance process and the APS Code of Conduct can operate interdependently. The *Protective Security Manual* (PSM) lists integrity, honesty and trustworthiness as key suitability indicators for employees who hold a security clearance while the APS Code of Conduct specifies 'an APS employee must behave honestly and with integrity in the course of APS employment': section 13(1) of the *Public Service Act 1999*. Failure to provide honest answers would normally justify a refusal to grant

a clearance, and would also amount to a breach of a Code of Conduct, and provide a ground for termination: section 29(3)(f) of the *Public Service Act 1999*.

Alternatively, if an agency becomes aware that an employee has provided false or misleading information in a security clearance process, the employee's security clearance may be withdrawn in accordance with the PSM. It may then be possible to terminate employment on the ground that 'the employee lacks, or has lost, an essential qualification for performing his or her duties': section: 29(3)(b) of the *Public Service Act 1999*.

Text of the decision is available at:

<http://www.airc.gov.au/decisionssigned/html/PR956106.htm>

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